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4                   UNITED STATES DISTRICT COURT  
5                   WESTERN DISTRICT OF WASHINGTON  
6                   AT TACOMA

7                   OHIO CASUALTY INSURANCE  
8                   COMPANY, an Ohio corporation,

9                         Plaintiff,

10                         v.

11                   USAA CASUALTY INSURANCE  
12                   COMPANY, a Texas corporation,

13                         Defendant.

14                         Case No. C07-5316FDB

15                         ORDER GRANTING DEFENDANT  
16                        USAA CASUALTY INSURANCE  
17                        COMPANY'S MOTION FOR  
18                        SUMMARY JUDGMENT

19                   The underlying facts are undisputed. Ohio Casualty seeks contribution from USAA Casualty  
20                   Insurance Company (USAA CIC) claiming that USAA CIC had a duty to defend its policy holders,  
21                   Luke and Monica Aikins. The Aikins' nephew died when Mr. Aikins accidentally ran over him while  
22                   operating a bulldozer on the Aikins' property. USAA CIC denied coverage because the Aikins'  
23                   USAA CIC homeowners' policy had a clear exclusion for accidents arising out of the use of a  
24                   motorized land conveyance (such as a bulldozer). Ohio Casualty admits in its Answers to USAA  
25                   CIC's Interrogatories and in its briefing that Mr. Aikins was "operating a piece of equipment not  
26                   insured under the Aikins' homeowner's policy with USAA." The exclusion provides as follows  
27                   under the heading "Exclusions" "1. Coverage E – Personal Liability and Coverage F – Medical  
28                   Payments to Others do not apply to bodily injury or property damage ... e. *arising out of:*"  
29

30                         (1) the ownership, maintenance, use, loading or unloading of motor vehicles  
31                         or *all other motorized land conveyances*, including trailers, owned or operated by or  
32                         rented or loaned to an **Insured**;

33                   USAA CIC Policy, Sachs Decl. Ex. A, at Pg. 12-13 (italics added) (bold in original).

34  
35  
36                   ORDER - 1

1 Pursuant to the foregoing exclusion, USAA CIC moves for summary judgment, arguing that  
2 there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.  
3 Furthermore, USAA CIC argues that any factual disputes over whether Mr. and/or Mrs. Aikins were  
4 negligent are not *material* factual disputes.

5 Ohio Casualty has brought claims against USAA CIC for bad faith, Consumer Protection Act  
6 violations, and for contribution and/or equitable indemnity. Ohio Casualty suggests that USAA CIC  
7 had a duty to conduct a full investigation and that there is an issue of fact as to whether USAA CIC  
8 met this duty, that USAA CIC failed in its duty to give equal consideration to the interests of the  
9 insureds, and that USAA CIC failed to defend after the Aikins made their demand.

10 The Court having considered the parties' submissions on USAA CIC's summary judgment  
11 motion and the record herein, concludes that USAA CIC motion must be granted for the following  
12 reasons.

13 It is undisputed, and it is recognized that a bulldozer is a motorized land conveyance. *See*  
14 *Richards v. USAA*, No. 98-2-11651-0, 2000 WL 339898, at \*2 (Wn. Ct. App. Mar. 27, 2000); *St.*  
15 *Paul Fire and Marine Insurance Company v. Home Insurance Company*, 233 A.D.2d 388  
16 (1996)(Home Insurance had an exclusion for damages arising out of the use of "motor vehicles or all  
17 other motorized land conveyances"; the vehicle at issue was a bulldozer.)

18 Ohio Casualty's assertion that USAA CIC still had a duty to defend on the basis of either of  
19 the Aikins' negligent actions is unavailing, as such an assertion is unsupported in the law and would  
20 render the exclusion meaningless. The cases cited by USAA CIC contained facts establishing  
21 negligence on the part of the insureds, but concluded that once a court determines that an exclusion  
22 applies, there is no need to address whether the insured was negligent. *See, e.g., Brown v. Farm*  
23 *Bureau Gen. Ins. Co. Of Mich.*, 273 Mich. App. 658, 664 (2007) ("Coverage under a policy is lost if  
24 any exclusion in the policy applies to an insured's particular claims. Clear and specific exclusions  
25 must be given effect because an insurance company cannot be liable for a risk it did not assume.").

26 ORDER - 2

1 The Court agrees that in situations where a death is caused by a motorized land conveyance,  
2 someone is probably negligent, but if the exclusion were nullified by stating that someone was  
3 negligent, the exclusion would be pointless. *See also Toll Bridge Auth. v. Aetna Ins. Co.*, 54 Wn.  
4 App. 400, 404-05 (1989)(Insured argued that although the exclusion applied, a determination of  
5 proximate cause was still necessary, but Appellate Court affirmed the trial court's conclusion that the  
6 exclusion applied.)

7 Ohio Casualty’s bad faith claim also fails because “Where an exclusion clearly and  
8 unambiguously applies to bar coverage, the court’s inquiry ends.” *Scottsdale Ins. Co. v. Int’l*  
9 *Protective Agency, Inc.*, 105 Wn. App. 244, 249 (2001), *citing Hayden v. Mut. Of Enumclaw Ins.*  
10 *Co.*, 141 Wn.2d 55, 65 (2000). To establish bad faith, the insured must show that the insurer’s  
11 actions were “unreasonable, frivolous, or unfounded.” *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558,  
12 560 (1998). It cannot be concluded that USAA CIC actions in this case were unreasonable,  
13 frivolous, or unfounded. On the contrary, USAA CIC acted appropriately in denying coverage under  
14 the clear exclusion in the homeowner’s policy. Accordingly, all Ohio Casualty’s claims will be  
15 denied with prejudice.

16 NOW, THEREFORE, IT IS ORDERED: Defendant USAA Casualty Insurance Company's  
17 Motion for Summary Judgment [Dkt. # 11] is GRANTED and all of Plaintiff Ohio Casualty  
18 Insurance Company's claims and DISMISSED with prejudice. The Clerk of the Court shall enter  
19 Judgment accordingly in favor of USAA Casualty Insurance Company.

21 || DATED this 13<sup>th</sup> day of March, 2008.

  
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

26 || ORDER - 3